

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARVIN BRYANT,

No. C 06-00005 CW (PR)

Petitioner,

ORDER LIFTING STAY AND  
DIRECTING RESPONDENT TO SHOW  
CAUSE WHY THE WRIT SHOULD NOT  
BE GRANTED

v.

T. FELKER, Warden,

Respondent.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On March 15, 2007, the Court issued an Order granting Petitioner's request for a stay of proceedings while he returned to state court to exhaust his state judicial remedies with respect to the issue of re-sentencing. In April, 2007, Petitioner informed the Court that his state proceedings had concluded, and he filed an amended petition containing his exhausted claim relating to the issue of re-sentencing. He notes that the California Supreme Court denied his state habeas petition on April 11, 2007. On May 23, 2007, he filed a motion entitled, "Motion to Hold Amended Petition for Petitioner's Filing of Second Amended Petition." On May 29, 2007, he filed his second amended petition.

Before the Court are Petitioner's implied motion for leave to file his second amended petition and his "Motion to Hold Amended Petition for Petitioner's Filing of Second Amended Petition."

Good cause appearing, the Court lifts the stay and GRANTS Petitioner leave to file his second amended petition. The Clerk of the Court is directed to mark Petitioner's second amended petition as filed on May 29, 2007, the date it was received.

1 The Clerk of the Court shall REOPEN this case and serve a copy  
2 of this Order and the second amended petition and all attachments  
3 thereto upon Respondent and Respondent's attorney, the Attorney  
4 General of the State of California. The Clerk shall also serve a  
5 copy of this Order on Petitioner at his most current address.

6 Respondent shall file with this Court and serve upon  
7 Petitioner, within sixty (60) days of the issuance of this Order,  
8 an answer conforming in all respects to Rule 5 of the Rules  
9 Governing Section 2254 Cases, showing cause why a writ of habeas  
10 corpus should not be issued. Respondent shall file with the answer  
11 a copy of all portions of the state trial record that have been  
12 transcribed previously and that are relevant to a determination of  
13 the issues presented by the petition.

14 If Petitioner wishes to respond to the answer, he shall do so  
15 by filing a traverse with the Court and serving it on Respondent  
16 within thirty (30) days of his receipt of the answer. Otherwise,  
17 the petition will be deemed submitted and ready for decision thirty  
18 days after the date Petitioner is served with Respondent's answer.

19 Petitioner is reminded that all communications with the Court,  
20 whether by way of formal legal motions or informal letters, must be  
21 served on Respondent by mailing a true copy of the document to  
22 Respondent's counsel.

23 Extensions of time are not favored, though reasonable  
24 extensions will be granted. Any motion for an extension of time  
25 must be filed no later than seven (7) days prior to the deadline  
26 sought to be extended.

1       Petitioner's "Motion to Hold Amended Petition for Petitioner's  
2 Filing of Second Amended Petition" (docket no. 13) is denied as  
3 moot.

4       This Order terminates Docket no. 13.

5       IT IS SO ORDERED.

6 Dated: 6/30/09



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CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MARVIN BRYANT III,

Plaintiff,

v.

T.FELKER et al,

Defendant.

Case Number: CV06-00005 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 30, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: June 30, 2009

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk